IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

CRIMINAL APPEAL No. 343 OF 2001
(Old No. 1776 of 1986)

Bishan Singh S/o Bachchi Singh and others

....Revisionists.

Vs

State of Uttarakhand .... .Respondent.

Sri B.S. Adhikari, learned counsels for the appellants.
Sri Nandan Arya, learned A.G.A. for the State

Date of decision :-14.03.2007

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :-14.03.2007

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND, AT NAINITAL.

Criminal Appeal No. 343/2001
(Old No. 1776/1986)

1- Bishan Singh S/o Bachchi Singh
2- Arjun Singh S/o Govind Singh,
3- Sheoraj Singh S/o Govind Singh,
4- Govind Singh S/o Kunwar Singh,
5- Bhairav Dutt S/o Krishnanand
6- Govind Ballabh S/o Krishnanand,
All residents of village Naya Gaon Teen Pani, Police Station Haldwani, District Nainital ..... Appellants.

Versus

The State. . . . . .Respondent.

Sri B.S. Adhikari, learned counsel for the appellants.

Sri Nandan Arya, learned A.G.A. for the State.

Hon'ble Dharam Veer, J:

This criminal appeal, U/S 374 (2) Code of Criminal Procedure, 1973 has been preferred by the appellants against the judgment and order dated 17-6-1986, passed by the II Additional Sessions Judge, Nainital, in S.T. No. 76 of 1985, convicting the appellants Buishan Singh, Arjun Singh, Sheoraj Singh, Govind Singh, Bhairav Dutt and Govind Ballabh, under Sections 147, 308/149 Indian Penal Code, 1860 (hereinafter referred 'I.P.C.') and sentencing each of them to undergo rigorous imprisonment for a term of one year for the offence U/S 147 I.P.C. and rigorous imprisonment for a term of four years U/S 308/149 I.P.C. Both the sentences were to run concurrently.

2- During the pendency of appeal, accused/appellants Arjun Singh, Sheoraj Singh, Govind Singh and Bhairav Dutt have died. The confirmation report of the death of appellants Arjun Singh, Sheoraj Singh, and Govind Singh has been received from the C.J.M. Nainital vide his letter dated 16-12-2006 whereas the death report of appellant Bhairav Dutt sent by C.J.M. Nainital is dated 22.2.2007 on the file. Hence the appeal has abated against all these accused/appellants.

3- The prosecution case, in brief , is that on 30-9-1984 at 6.30 P.M. Harish Bhatt was coming towards his village and when he was on the road, accused Bishan Singh, Arjun Singh, Sheoraj Singh, Govind Singh, Bhairav Dutt and Govind Ballabh began to beat him with Lathis. They also took out Rs.400/- kept in his pocket. When the accused persons were beating Harish Bhatt, his brother Ghanshyam Dutt Bhatt, who was coming from the market, came there and saved him. The accused persons were inimical to Harish Bhatt, therefore they attacked him with intention to cause his death. Ghanshyam Dutt brought the injured in the hospital, where he was medically examined. The injured Harish Bhatt got written the F.I.R., Ext. Ka. 1 and handed over it to his brother Ghanshyam Dutt, who lodged it at P.S. Haldwani. On the basis of the F.I.R., Ext. Ka. 1, chick report, Ext. Ka. 7 was prepared at the Police Station and a case U/Ss 147, 323, 506 I.P.C. was registered against the accused persons at report No. 69 dated 30-9-1984, the copy of which is Ext. Ka.8.

4- On 30-9-1984, at 8.40 P.M.Dr. J.S. Pangtey (P.W.6), Medical Officer, Civil Hospital, Haldwani

medically examined injured Harish Chandra Bhatt and found the following injuries on his person:-

1- Lacerated wound 3cm x 1cm on scalp at right parietal region, 14 cm above the right eye-brown. Scalp deep. Fresh bleeding present.
2- Lacerated wound 5cm x ½ cm x scalp deep, on scalp, at right parietal area, 19cm above the right eye-brow.
3- Lacerated wound 3cm x ¼ cm x skin deep, 4cm above the right eye-brow at right forehead, 6cm x 7 cm swelling around the wound.
4- Abrasion 1cm x 1/2 , at upper lip, 3cm from the right angle of the mouth.
4- Abrasion 1cm x ½ cm at lower lip right angle of mouth.
5- Contusion mark 10cm x 5cm above right shoulder reddish in colour. Swelling 2cm around the wound.
6- Contusion mark 6cm x 6.5cm on above and front and middle of left arm, 13cm below the shoulder joint 1 cm swelling around the injury.
7- Contusion 12 cm x 10cm at fore-arm, 8cm from the left wrist joint ½ cm swelling around the injury.
8- Complain of pain in both lower legs and thigh. but no injury seen.

In the opinion of the Medical Officer injury Nos.3,4 and 5 were simple whereas injury Nos. 1,2, 6, and 7 were kept under observation and advice was given for x-ray. This witness has proved the injury report, Ext. Ka.3 prepared by him. X-ray of the injured was taken and on the basis of x-ray plates (Exts. 1 and 2) Dr. J.S. Pangtey prepared supplementary report dated 1.10.84, Ext. Ka.4. In the opinion of this witness there was

fracture of ulna with dislocation of wrist joint. Injury No.7 was grievous. The Doctor opined that the injuries could have been caused on the date of the medical examination, i.e. 30-9-84 at about 6.30 P.M.

5- The investigation of the case was entrusted to S.I. Safiq Ahmad (P.W.7). He recorded the statement of complainant/injured Harish Bhatt and took into possession the blood-stained shirt put-on by the injured and prepared fard, Ext. Ka.2. The I.O. visited the place of occurrence and prepared site-plan, Ext. Ka.5 on the pointing out of the witnesses. He also seized a wooden log having blood-stains, from the place of the occurrence. After completion of the investigation, he submitted charge sheet, Ext. Ka.6 against the accused persons.

6- The Chief Judicial Magistrate, Nainital vide his order dated 27-3-1985 committed the case to the court of Sessions for trial. The II Addl. Sessions Judge, Nainital framed charges U/Ss 147, and 308 read with Section 149 I.P.C. against all the accused persons. They pleaded not guilty and claimed to be tried.

7- The prosecution in order to bring home the guilt against the accused persons, examined seven witnesses. Of these, P.W.1 Smt. Shanti Joshi, P.W.2 Smt. Kamla Devi, P.W.3 Km. Deepa Joshi and P.W.4, Ghashyam Dutt Bhatt are the eye-witnesses of the occurrence. P.W.5, Harish Chandra Bhatt is the injured witness and the complainant of the case. P.W.6, Dr. J.S. Pangtey has medically examined the injured and P.W.7, S.I. Safiq Ahmad has investigated the case.

8- P.W.1, Smt. Shati Devi has deposed in her statement that about one year back on the day of occurrence she was at her house in village Teen Pani. Her daughter Km. Deepa was also at the house. At about 6- 6.30 P.M. she heard the shriek 'Bachao Bachao' and at this she along with her daughter came in the Varandah of the house and saw that in front of her house on the way near the field of Upadhyaya the accused persons were beating Harish Bhatt. The accused were armed with Lathis. At that time Ghanshyam Bhatt, brother of injured, came there and some women bringing grass also reached there and on seeing them the accused persons fled away from the spot. Thereafter the injured was carried to hospital by Ghanshyam Bhatt. This witness also deposed that she knew the accused persons from before the incident.

9- P.W.2, Smt. Kamala Devi has supported the version given by P.W.1, Smt. Shanti Joshi. She has alleged that about one year back at about 6 P.M. she was returning her home with heap of grass and when she reached at some distance from her house in village Teen Pani, she saw that on the road the accused persons were beating Harish Bhatt with Lathis and Dandas. He had sustained a number of injuries at the hands of the accused persons. At the same time Ghanshyam Bhatt, brother of the injured also came there and he saved the injured Harish Bhatt from the accused persons and then he brought the injured in a rickshaw to the hospital. This witness also stated that she knew the accused persons prior to this incident.

10- P.W.3, Km. Deepa Joshi is the daughter of P.W.1, Smt. Shanti Joshi. This witness has fully supported the prosecution versions and repeated and

corroborated the deposition of her mother Smt. Shanti Josh, P.W.1.

11- P.W.4, Ghanshyam Dutt Bhatt is the brother of injured Harish Dutt. This witness had reached at the spot and had seen the occurrence from his own eyes. He has deposed that at about 6-30 or 7.00 P.M. on the day of occurrence, he was returning from Haldwani after giving milk there and he reached at the spot on hearing alarm and then he saw that the accused were beating Harish Bhatt recklessly with Lathis. He saved the injured and brought him to Haldwani hospital. At Haldwani Hospital, he got the written report from his brother and lodged it at P.S. Haldwani. This witness also alleged that he knew the accused persons from prior to the incident. This witness also alleged that he did not scribe the written report, his brother had got it scribed from some one else.

12- P.W.5, Harish Chandra Bhatt is the injured eye witness. He has deposed that on 30th September 1984, he was returning from market. At about 6-00 – 6-30 P.M. when he was entering the gate of his village, accused Govind Singh, Arjun Singh, Sheoraj Singh, Bishan Singh, Bhairav Dutt, Govind Ballabh attacked him with Lathis-Dandas. He after receiving injuries fell down. He sustained injuries on left hand, head and all over his body. His left hand was broken. He further deposed that his brother Ghanshyam reached at the spot and saved him from the clutches of the accused. His brother brought him to hospital in a rickshaw with the help of passerby. In the hospital he got scribed the written report from a person and after reading it, he signed on it. This witness has proved the written report, Ext. Ka. 1. This witness also alleged that he saw a

witness of P.W.1, Shanti Joshi in a case against the accused persons and that is the reason that he was beaten by the accused persons. He also alleged that in the hospital the police took into possession of his blood-stained shirt and prepared memo Ext. Ka.2. This witness also proved his signatures of memo Ext. Ka.2.

13- P.W.6, Dr. J.S. Pangtey has medically examined the injured Harish Bhatt at Civil Hospital Haldwani and found as many as 9 injuries on his persons, the description of the injuries has already been given in the preceding paragraph of this judgment.

14- P.W.7, S.I. Safiq Ahmad was entrusted the investigation of this case. This witness has proved the recovery memo Ext. Ka.2 relating to taking into possession the blood-stained shirt put-on by the injured, site plan, Ext. Ka.5 of the place of occurrence and charge sheet, Ext. Ka.6, submitted by him against the accused persons.

15- The accused persons were examined U/S 313 Cr.P.C. They denied the prosecution allegation and alleged that they have been implicated falsely in the case due to enmity. However, no evidence was adduced by them in their defence.

16- The learned Sessions Judge, after hearing the arguments of the learned counsel for the parties having scrutinized the evidence adduced by the prosecution, found the accused persons guilty of the offence punishable U/Ss 147, and 308/149 I.P.C. and sentenced each of them to undergo R.I. for one year U/S 147 I.P.C. and R.I. for four years U/S 308/149 I.P.C.

and also directed that both the sentences shall run concurrently.

17- Feeling aggrieved, the accused have preferred appeal before this Court.

18- I have heard Sri B.S. Adhikari, learned counsel for the appellants and Sri Nandan Arya, learned A.G.A. for the State and have perused the evidence on record.

19- Learned counsel for the appellants firstly argued that the injured Harish Bhatt was the eye witness against the accused persons in a criminal case filed on the complaint of Smt. Shanti Josh (P.W.1), therefore, the testimony of P.W.1 Smt. Shanti Joshi and P.W.3, Km. Deepa Joshi, daughter of P.W.1, Smt. Shanti Joshi can not be taken as an independent evidence in the present case and for this sole reason the whole case is doubtful.

20- The above submission of the learned counsel for the defence has no substance. Mere fact that the injured Harish Bhatt was a witness of Smt. Shanti Joshi, P.W.1, in a criminal case against the accused/appellant cannot discard the veracity of reliable evidence of P.W.1, Smt. Shanti Joshi and her daughter Km. Deepa P.W.3 Smt. Shanti Joshi, P.W.1, has deposed that about one year back on the day of occurrence she was at her house in village Teen Pani. Her daughter Km. Deepa was also at the house. At about 6- 6.30 P.M. she heard the shriek 'Bachao Bachao' and at this she along with her daughter came in the Varandah of the house and saw that in front of her house on the way near the field of Upadhyaya the accused persons were beating Harish Bhatt. The accused were armed with Lathis. At that time

Ghanshyam Bhatt, brother of injured, came there and some women bringing grass also reached there and on seeing them the accused persons fled away from the spot. Thereafter the injured was carried to hospital. This witness also deposed that she knew the accused persons from before the incident. This witness has admitted this fact that Harish Bhatt was an eye witness for her in a criminal case against the accused/appellants. In her cross-examination this witness has denied the suggestion that she is giving false evidence for the reason that the injured Harish Bhatt was her witness against the accused/appellants. The defence has not been able to bring out anything material from the cross-examination of this witness which may discredit her testimony. The testimony of this witness seems to be cogent and reliable.

21- The evidence of P.W.3, Km. Deepa is also fully reliable. She has supported the evidence of P.W.1, Smt. Shanti Joshi and has deposed that the accused/appellants were beating Harish Bhatt by Lathis-Dandas. Harish Bhatt shouted 'Bachao Bachao' and thereafter Ghanshyam Bhatt, brother of the injured also reached there. No suggestion with regard to the credibility of the evidence of this witness has been put to her by the defence. The aforesaid two witnesses seem to be natural witnesses and there is no reason to disbelieve their testimony.

22- Further the evidence of P.W.1, Smt. Shanti Joshi and P.W.3, Km. Deepa has been corroborated by P.W.2, Smt. Kamla Devi, a independent witness. This witness has deposed that on the day of incident at about 6 P.M. she was returning her home with heap of grass and when she reached at some distance from her

house in village Teen Pani, she saw that on the road the accused persons were beating Harish Bhatt with Lathis and Dandas. He had sustained a number of injuries at the hands of the accused persons. At the same time Ghanshyam Bhatt, brother of the injured also came there and he saved Harish Chandra Bhatt from the accused persons and then he brought the injured in a rickshaw to the hospital. This witness also stated that she knew the accused persons prior to this incident. In her cross-examination the defence has put a suggestion to her that due to friendship with P.W.1, Smt. Shanti Joshi, she is giving false evidence. This witness has emphatically denied this suggestion. No other reason has been shown by the defence as to why this witness was given false evidence against the accused/appellant. This witness is a natural witness and there appears no reason to discard her testimony. I find that the evidence of this witness is cogent and reliable.

23- Further the depositions of P.W.4, Ghanshyam Dutt and P.W.5, injured Harish Bhatt fully corroborate the evidence of above prosecution witnesses. P.W.4, Ghanshyam Dutt had reached at the place of occurrence on hearing the noise and he had seen the occurrence with his own eyes. He has deposed that when he reached at the spot, he saw that the accused/appellants were beating his brother Harish Bhatt with Lathis recklessly. This witness has carried the injured to civil hospital, Haldwani. He has also lodged the report at P.S. Haldwani after taking the same from his brother injured Harish Bhatt. This witness has been cross-examined at length but nothing material has been brought out from his deposition which may discard his testimony. No reason has been assigned to this

witness to falsely depose against the accused/appellants. The injured witness P.W.5, Harish Bhatt has also fully corroborated the prosecution version.

24- The injured Harish Bhatt was medically examined by Dr. J.S. Pangtey, P.W.6 on30-9-1984 at 8.40 P.M. in Civil Hospital Haldwani and he has found 3 lacerated wounds, 2 abrasions, and 3 contusions. In his opinion the injuries could have been caused by Lathis- Dandas on the date and time of the occurrence. The doctor also found fracture of ulna with dislocation of wrist joint. Injury No.7 on the middle of left arm was found grievous. Lacerated wounds were also caused on scalp at right parietal area. The medical evidence fully corroborates the prosecution version.

25- From perusal of evidence of above prosecution witnesses, I am of the considered view that the prosecution has been able to establish that the accused/appellants have assaulted the injured Harish Bhatt with Lathis-Dandas and caused injuries on his person on 30-9-1984 at 6.30 P.M. at Nuagaon Teen Pani, P.S. Haldwani, District Nainital.

26- Learned counsel for the appellant next argued that the F.I.R. in this case has been prepared with consultation of police officials. He has drawn the attention towards the statement of P.W.4, Ghanshyam Dutt who has stated that while the written report was being prepared in the hospital, police was present there. Learned counsel therefore submitted that the accused have been implicated falsely due to the enmity with the injured.

27- The present incident took place at about 6.30 P.M. The accused persons were known to the prosecution witnesses from before. The injured was rushed to the hospital for first aid and there the written report was got prepared at the dictation of the injured and thereafter the same was lodged at the police station by Ghanshyam Dutt, brother of the injured. On the basis of written report, Ext. Ka.1, chick F.I.R. was prepared at the police station at 11.10 P.M. The incident has occurred at 6.30 P.M. and after the incident the injured was brought to the hospital where he was medically examined at 8.40 P.M. and thereafter the report was prepared and lodged at the police station. Hence, it cannot be said that the F.I.R. was lodged with delay. Further the learned counsel for the accused has admitted the genuineness of chick F.I.R. and the copy of G.D. No. 69 dated 30.9.1984. In view of above facts and circumstances of the case it cannot be said that the F.I.R. of the case is a concocted one and has been lodged to falsely implicate the accused with consultation of police officials.

28- Learned counsel for the appellants lastly submitted that the charge U/Ss 147 and 308/149 I.P.C. have not been established against the accused/appellants because prosecution has not been able to prove the unlawful assembly and none of the witnesses have stated that the accused persons were beating the injured with such intention or knowledge and under such circumstances that by their act the death of the injured could have been caused.

29- The above submissions raised on behalf of the accused/appellants have no merit. The trial court has found the accused/appellants guilty for the offences

U/S 147 and 308/149 I.P.C. The motive for commission of crime has been mentioned in the written report, Ext. Ka. 1. It has been mentioned in the F.I.R. that the injured Harish Bhatt is a witness in a criminal case against the accused persons and the injured was threatened to kill him and he had danger to his life at the hands of the accused. It was also mentioned in the F.I.R. that the accused also threatened to set fire at the huts of injured and his companions. The accused attacked on him with intention to eliminate him.

30- The unlawful assembly has been defined under Section 141 I.P.C. which reads as follows:-

"141. Unlawful assembly- An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

*First-*To overawe by criminal force, or show of criminal force, central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second- To resist the execution of any law, or of any legal process; or

Third- To commit any mischief or criminal trespass, or other offence; or

Fourth- By means of criminal force, or show of criminal force to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or if the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

31- In the present case six accused persons participated in the commission of crime with their common object to assault the injured Harish Bhatt with intention to kill him. They being member of unlawful assembly used violence and were guilty of rioting. U/S 147 I.P.C. punishment to two years, or with fine, or with both has been provided for rioting. Each of the accused/appellants were punishment so awarded to my view is just and proper and needs no interference.

32- So far as the offence U/S 308/149 I.P.C. is concerned, each of the accused/appellant was awarded R.I. for four years. Section 308 I.P.C. defines attempt to commit culpable homicide, which reads as below:-

> **"Attempt to commit culpable homicide-** Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description

for a term which may extend to seven years; or with fine, or with both."

33- From perusal of record it has been established that the intention of the accused persons was to commit culpable homicide. They had enmity with the injured Harish Bhatt. Threats were also given to him by the accused persons to ruin his life. P.W.4, Ghanshyam Dutt has clearly stated that when he reached at the spot he saw that the accused persons were beating the injured recklessly with Lathis-Dandas. Injuries were also caused on scalp. Looking to the seat of injuries and the facts and circumstances of the case the prosecution has been able to prove the offence U/S 308/149 I.P.C. against the accused persons. The finding of the trial court is just and proper and need no interference by the appellate court.

34- In view of the above discussion, the appeal has no force and is liable to be dismissed.

35- Accordingly the appeal is dismissed. The judgment and order dated 17-6-1986 passed by II Addl. Sessions Judge, Nainital in S.T. No. 76/1985, convicting the appellants U/S 147, 308/149 I.P.C. and sentencing each of them to undergo R.I. for one years U/S 147 I.P.C. and four years R.I. U/S 308/149 I.P.C. is upheld.

36- The appeal against accused/ appellants Arjun Singh, Sheoraj Singh, Govind Singh and Bhairav Dutt has abated as all these accused persons have died during the pendency of the appeal. The other accused/appellants Bishan Singh and Govind Ballabh are on bail. Their bail bonds are cancelled and sureties discharges. They shall be taken into custody forthwith to serve out the sentence of imprisonment awarded to

them. Both the sentences shall run concurrently as directed by the trial Judge.

37- Let the record be sent back to the concerning court for compliance.

(Dharam Veer, J.)

Dated: March 14, 2007

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